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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,318	06/19/2000	Frank Venegas JR.	IDS-10505/14	4057

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EXAMINER
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YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/597,318

Applicant(s)

VENEGAS, FRANK

Examiner

Winnie Yip

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

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This is a first office action for a Request continued Examination application (RCE), filed September 13, 2004, of earlier application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Response to Amendment*

1. The amendment filed September 13, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: an interior diameter in "the range of 3 to 8 inches" (claim 8). Applicant is required to cancel the new matter in the reply to this Office Action.

Therefore, in response to the amendment, **the new material "the range of 3 to 8 inches" has not been treated on the merits.**

#### *Claim Objections*

2. Claims 13-15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. According to the specification, the "resilient portion (40)" and the "flange (42)" are parts of the post but not part of the cover. However, claim 8 only claims a cover, and does not include the post. If applicant intends to claim a combination, all structural limitation must be positively claimed.

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**Due to the confusing, these claims have been treated on the merits as a cover with such features but not a combination with a post. Correction is required. No new matter can be entered.**

***Claim Rejections - 35 USC § 102***

3. Claims 8-9, 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Arth, Jr. (US Patent No. 5,299,883).

Arth, Jr. shows and discloses a cover (10) capable for a post extending upwardly from a ground surface, the cover consisting of: an elongated, generally cylindrical plastic sleeve (18) having an open lower end and a closed hemispherically shaped upper end (20), the sleeve having an interior diameter (24) and a consistent wall thickness including the closed upper end, wherein the sleeve is made of plastic such as polyethylene or rubber (see col. 3, line 29), the interior diameter capably has a range of 3 to 8 inches to accommodate on the wide variety of existing different diameter posts as claimed. Notice the specific dimension of the interior diameter has not been treated in the merits.

Regard to claims 13-15, the open end of the sleeve having a portion (28) which would be considered as a resilient portion (28) near the open lower end (as claim 13) and being a rubber flange inserted into the interior diameter (as claims 14-15).

4. Claims 8-9 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Baur (US Patent No. 5,134,828).

Baur shows and discloses a cover (18) capable for covering a post (52), the cover consisting of an elongated, generally cylindrical plastic sleeve (22) having an open lower end

(42) and a closed hemispherically shaped upper end (24), the sleeve having an interior diameter(26) and a consistent wall thickness including the closed upper end, and a flange (28) extending outwardly from the open lower end, wherein the sleeve is made of plastic such as polyethylene (see col. 3, line 33), the interior diameter capably has a range of 3 to 8 inches to accommodate on the wide variety of existing different diametered posts (52) as claimed. Notice the post and the specific dimension of the interior diameter has not been treated in the merits.

5. Claims 8-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Deike (US patent No. 4,021,977).

Deike shows and teaches a cover for covering a stanchion, the cover (10) comprising: a sleeve (13) made of plastic such as polyethylene (see col. 6, line 9), the sleeve having an elongated, generally cylindrical body extending between two opposing ends, the sleeve having a generally cylindrical interior cavity and having substantially the same wall thickness, the opposing ends including an opened lower end to receive the elongated stanchion (12), and a closed second end with a closed hemispherical shaped cap (13a), a reflector tape (15) being wrapped around the upper end portion of the sleeve to provide a suitable color for good visible level, and the interior cavity having a diameter that is capable in a range of 3 to 8 inches for accommodating with a the diameters of variety existing diameter posts. Notice the specific dimension of the interior diameter has not been treated in the merits.

6. Claims 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Voegeli (US patent No. 3,812,279).

Voegeli shows and discloses a cover (12) capably used for a substantially rigid elongated cylindrical stanchion (21) having a lower end associated with the ground, the cover (12) consisting essentially of: an elongated, generally cylindrical sleeve (12) being made of a plastic such as polyethylene (see col. 2. line 66), the cylindrical sleeve (12) having an open lower end (25) and a closed, hemispherical shaped dome upper end, the cylindrical sleeve (12) having a consistent wall thickness including the enclosed hemispherically shaped upper end, the sleeve (12) having a generally cylindrical interior cavity having an interior diameter which is capable in the range of 3-8 inches for accommodating with the diameter of the post to be covered. Notice the specific dimension of the interior diameter has not been treated in the merits.

***Claim Rejections - 35 U.S.C. 103***

7. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arth, Jr. '883 as applied to claim 8 above.

The claims are considered to be met by Arth, Jr. as explained and applied in above rejections except that Arth, Jr. does not define the cover being made of various specific plastic materials such as polycarbonate or plastic with UV deterioration. However, it would have been an obvious matter of design choice to construct the cover from a desirable polymeric plastic, since the applicant has not disclosed that the specific type of plastic material solves any stated problem or is for any particular purpose and it appears that the claimed invention would perform equally well with the specific material as claimed to take advantage of the polymeric plastic's

desirable properties such as having sufficient impact strength characterizes, corrosion and wear properties such as thermal expansion, moisture absorption and resistance to chemical attack, etc. and may be made inherently to have desired surface characteristics. All of the foregoing is within the skills, competence and knowledge of the person with ordinary skills in the covering art.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arth, Jr. '883 as applied to claim 8 above, and further in view of Beatty (US Patent No. 4,516,756).

The claim is considered to be met by Arth, Jr. as explained and applied in above rejections except that Arth, Jr. does not define the cover being made of various specific plastic materials having an agent to provide a durable coloring throughout. However, Beatty teaches a cover (10) being made of polymeric plastic that would be molded with desirable color pigment to provide the plastic sleeve with desirable color without color painting (see col. 1, lines 62-65). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the plastic cover of Arth, Jr. being made of polymeric plastic being added with a desirable color pigment as taught by Beatty for providing a plastic cover with desirable color appearance without any painting requirement.

9. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty '756 in view of Arth, Jr. '883.

Beatty shows and discloses a cover (10) for coving an existing post, the cover (10) comprising an elongated, a generally cylindrical synthetic plastic sleeve (18), the plastic which

could be molded with a desired color pigment to provide a durable coloring throughout (see col. 1, lines 62-65), the sleeve having an open lower end and an enclosed upper end, the sleeve having a consistent wall thickness including the enclosed upper end, and the sleeve having an interior cavity having a diameter which is capable in the range of 3-8 inches for accommodating with the diameter of the post to be covered. Although Beatty does not define the closed upper end of the sleeve having a generally hemispherical configuration as claimed, Beatty teaches the closed end of the sleeve may be formed in variety of shapes corresponding to the shape of the stanchion to be received therein (see Figs. 1 and 3). Further, Arth, Jr. teaches a protective cover (18) for covering an elongated stanchion (16), the cover having, as well known in the art, a closed, hemispherical shaped upper end (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51) for covering an elongated stanchion (16). Therefore, it would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the cover of Beatty to obtain an enclosed hemispherical top end as taught by Arth, Jr. as specified in claim 8 because Applicant has not disclosed that a cover having an closed top end being formed with a hemispherical shaped dome top end provides an advantage, is used for a particular purpose, or solves a stated problem. Applicant further disclosed that the enclosed top end of the cover would be formed with various shapes such as show in Figs. 10A to 10B. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the either an enclosed flatten top end of Beatty or hemispherical shaped upper end as taught by Arth, Jr. because both shaped top ends perform the same function of providing a smooth protective cover with durable upper end to accommodate the shape of the



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stanchion for protecting a penetration of the stanchion through the sleeve with desirable aesthetic appearance.

Regard to claims 9-10 and 12, although Beatty does not define the cover is made of specific plastic such as polyethylene or polycarbonate or UV resist deterioration as claimed, Arth, Jr. further teaches the cover being made of plastic such as polyethylene as claimed. Therefore, it would have been obvious to one skilled in the art, at the time the invention was made, to modify Beatty' cover from specific polymeric plastic as claimed as taught by Arth, Jr. since the applicant has not disclosed that the specific type of plastic material solves any stated problem or is for any particular purpose and it appears that the claimed invention would perform equally well with the specific material as claimed as an obvious matter of design choice to take same function of the polymeric plastic properties such as having sufficient impact strength characterizes, corrosion and wear properties, moisture absorption and resistance to chemical attack, etc. and may be made inherently to have desired surface characteristics. All of the foregoing is within the skills, competence and knowledge of the person with ordinary skills in the covering art.

10. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almond (US patent No. 4,972,864) in view of Arth, Jr. '883.

Almond shows and teaches a cover (25) for covering a stanchion (22), the cover (25) consisting of an elongated, generally cylindrical plastic sleeve (25), the plastic being made of a brightly colored plastic for facilitate visual detection thereof, which could be molded with a desired color pigment to provide a durable coloring throughout (see col. 1, lines 62-65), said sleeve (25) having an open lower end (26) and a closed upper end (28), said sleeve (25) having a

consistent wall thickness including the enclosed end, and the sleeve (25) having a generally cylindrical interior cavity having an interior diameter which is capably in a range of "3 to 8 inches" as claimed. Although Almond does not define the closed end (28) of the sleeve (25) having a generally hemispherical shaped configuration as claimed, Almond discloses the closed end (28) of the sleeve (25) may be formed in variety of shapes corresponding to the shape of the stanchion to be received therein (see Figs. 3, 9, 10). Further, Arth, Jr. teaches a protective cover (18) for covering an elongated stanchion (16), the cover having, as well known in the art, a closed, hemispherical shaped upper top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51) for covering an elongated stanchion (16). Therefore, it would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the cover of Almond to obtain an enclosed hemispherical upper end as taught by Arth, Jr. as specified in claim 8 because Applicant has not disclosed that a cover having an closed top end being formed specific configuration such as a hemispherical shaped upper end provides an advantage or is used for a particular purpose, or solves a stated problem. Applicant further disclosed that the enclosed top end of the cover would be formed with various shapes such as show in Figs. 10A to 10B. Therefore, one of ordinary skill in the art would have expected applicant's invention to perform equally well with the either an enclosed flatten top end of Almond or hemispherical shaped dome top as claimed as taught by Arth, Jr. because both shaped top ends perform an equal well function of providing a smooth protective cover with durable top end to accommodate the shape of the stanchion for protecting a penetration of the stanchion through the sleeve with desirable aesthetic appearance.

Regard to claims 9-10 and 12, although Almond does not define the cover is made of specific plastic such as polyethylene or polycarbonite or UV resist deterioration as claimed, Almond discloses the cover would be made of any suitable plastic material (see col. 3, lines 36-40). And, Arth, Jr. teaches the cover would be made of specific polymeric plastic such as polyethylene as claimed. Therefore, it would have been obvious to one skilled in the art, at the time the invention was made, to modify Almond's cover from specific polymeric plastic as claimed as taught by Arth, Jr. since the applicant has not disclosed that the specific type of plastic material solves any stated problem or is for any particular purpose and it appears that the claimed invention would perform equally well with the specific material as claimed as an obvious matter of design choice to take same function of the polymeric plastic properties such as having sufficient impact strength characterizes, corrosion and wear properties, moisture absorption and resistance to chemical attack, etc. and may be made inherently to have desired surface characteristics. All of the foregoing is within the skills, competence and knowledge of the person with ordinary skills in the covering art.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

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Winnie Yip  
Primary Examiner  
Art Unit 3637

wsy  
November 29, 2004